



W.P.No.8130 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.8130 of 2022

K.Seetha

... Petitioner

Vs.

1.Mahe Service Co-Operative Bank Limited,
Rep. by its President,
No.P571, Ho Mahi 673310,
Puducherry Union Territory.

2.The Employee Provident Fund Organization,
(Ministry of Labour and Employment, Government of India),
Rep. by its Assistant Provident Fund Commissioner,
Regional Office VK Complex, Fort Road,
Kannur – 670 001.

...

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the second respondent to take further action pursuant to the communication issued in letter dated 04.11.2020 in ref.No.KR/KNR/18016/Enf 1 (2)/2020-21/587 against the first respondent and disburse the pensionary benefits payable to the petitioner within a time



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limit to be stipulated by this Court.

For Petitioner : Mr.D.Senthil Kumar

For Respondents : Mr.V.Ajaya Kumar for R1
Mr.V.Sundareswaran for R2

ORDER

The Writ Petition is filed for a mandamus to direct the second respondent to take further action pursuant to the communication issued in letter dated 04.11.2020 in ref.No.KR/KNR/18016/Enf 1 (2)/2020-21/587 against the first respondent and disburse the pensionary benefits payable to the petitioner within a time limit.

2.The brief facts of the case are as follows:

(i)The petitioner was served with a charge memo for misconduct of misbehaviour and was imposed with the punishment of demotion to the lower post, withholding of three increments and also transfer to another branch. On 01.03.2004, the suspension order was revoked and the petitioner joined duty on 01.03.2004. Thereafter, a memo was issued by the first respondent on 30.04.2004 and the petitioner expressed her willingness to join duty and sought permission for the same. The first respondent refused



permission and therefore, the petitioner filed a Writ Petition in W.P.No.9677 of 2005. The said Writ Petition was disposed of with liberty to the petitioner to prefer an appeal before the Board of Directors of the first respondent. The petitioner preferred an appeal before the Board of Directors.

(ii) In the meantime, a charge memo dated 03.03.2007 was issued for unauthorized absence to the petitioner. The petitioner submitted her explanation to the same, but the 1st respondent refused to permit her to join duty hence she filed I.D.No.79 of 2012. During the pendency of the aforesaid I.D., a settlement was arrived at between the parties and the Labour Court passed the Final Order dated 29.10.2012 on the basis of the joint memo of compromise. The first respondent agreed to reinstate the petitioner into service on 01.11.2012 with continuity of service and back wages limited to Rs.2,00,000/-. The petitioner retired on 31.12.2019. On 22.06.2020, the petitioner represented to the 1st respondent to provide her pension and other retirement benefits, but the 1st respondent did not reply to the same. On 04.11.2020, the second respondent issued a letter to the petitioner stating that the explanation submitted by the first respondent in connection with non remittance of EPF dues in respect of the petitioner was not comprehensive and therefore, the first respondent was directed to remit



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the contribution of the petitioner at 8.33% per month as Employee Pension Fund and 3.67 per month to EPF as back wages for the period as per settlement with a further direction to submit ECR Challan immediately.

3. According to the petitioner, she had put in 25 years of service and therefore, she was eligible for pension under the Employees Pension Scheme, 1995. Because of the non remittance of the EPF dues by the first respondent, the petitioner was not able to receive the pension. The petitioner sent a representation dated 22.06.2021 to the first respondent for family pension and other retirement benefits but, the first respondent did not reply to the same. The petitioner, therefore filed a RTI application to the second respondent to which the second respondent replied on 04.11.2020 stating that the employer was directed to remit the contribution in respect of the petitioner at 8.33% per month as Employee Pension Fund and 3.67 per month to EPF as back wages for the period as per settlement with a further direction to submit the ECR Challan immediately. As the 1st respondent has not complied with the directions of the 2nd respondent, the petitioner has filed the writ petition.



4.The learned counsel for the petitioner submitted that the petitioner retired from service as early as on 31.12.2019 but she was not paid family pension amount even though she submitted Form 10D application to the second respondent requesting to sanction pension under the Employee Pension Scheme, 1995. The learned counsel further submitted that the petitioner received a letter from the second respondent stating that the petitioner was not eligible for the pension under the Employee Pension Scheme, 1995 and that her application for sanction of pension was rejected on the ground that her contributory service was only 8 years 6 months and 21 days. When the petitioner questioned the first respondent, there was no answer. Therefore, she made an application under the Right to Information Act, 2005 to which the second respondent replied on 04.11.2020.

5.Learned counsel for the first respondent vehemently opposed the contentions of the petitioner.

6.When the 1st respondent reinstated the petitioner with continuity of service, the petitioner's entire service ought to be taken into account for calculating the pension. For the fault of the 1st respondent in not remitting



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the contributions to the 2nd respondent, the petitioner should not suffer. The petitioner is a Senior Citizen aged about 65 years and is suffering from age related ailments. The petitioner indisputably has put in 25 years of service and so she is entitled to pension.

7.Under the circumstances, a direction is issued to the 2nd respondent to take further enforcement action against the 1st respondent pursuant to the communication dated 04.11.2020 and disburse the pensionary benefits within a period of four weeks from the date of receipt of a copy of this order.

8.The Writ Petition is accordingly allowed.

24.01.2024

Index : Yes / No
Speaking Order: Yes / No
Neutral Citation Case : Yes/No
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WEB COPY To

The Assistant Provident Fund Commissioner,
Employee Provident Fund Organization,
(Ministry of Labour and Employment, Government of India),
Regional Office VK Complex, Fort Road,
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N.MALA, J.

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